

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

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FEDERAL COMMUNICATIONS COMMISSION

In the Matter)

Implementation of Section 19 of the)
Cable Television Consumer Protection)
and Competition Action of 1992)

CS Docket No. 95-61

Annual Assessment of the)
Status of Competition in the)
Market for the Delivery of)
Video Programming)

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REPLY COMMENTS OF NETLINK USA

Netlink USA ("Netlink") hereby submits these reply comments in response to the comments filed in this proceeding by two distributors operating in the C-band Home Satellite Dish ("HSD") market. These commenters have alleged anticompetitive practices -- specifically discrimination on the part of certain programmers, including Netlink -- notwithstanding prior Commission findings and the Commission's new program access rules that permit pricing differentials.¹ These reply comments, like those filed last year by Netlink, further respond to these commenters' repetitive claims.

With the passage of the Cable Television Consumer Protection and

¹***See generally First Report and Order in Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992, ("Report and Order"), 8 F.C.C. Red. 3359 (1993); 47 C.F.R. § 76.1002.***

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Competition Act of 1992 ("1992 Cable Act"), Congress provided that satellite cable and satellite broadcast programming vendors were required to make programming services available to all multichannel video programming distributors ("MVPDs") on non-discriminatory terms and conditions. However, this legislation, as well as the Commission's implementing regulations, recognized the differences in the manner in which programming services are provided to different types of MVPDs. Indeed, the Commission found that delivering programming services to the HSD market is more costly than providing service to cable and other facilities-based operators and, as a consequence, rate differentials would be consistent with both the legislation and the Commission's implementing regulations.² Netlink, as a satellite broadcast programming vendor,³ utilizes price differentials reflecting the increased costs of serving the HSD market.

Nonetheless, certain HSD distributors continue to complain, as they have for the past six years, and in last year's proceeding leading up to the *First Competition Report*, that programming vendors such as Netlink unfairly discriminate against them in the sale of programming to the HSD market.⁴ The Commission reviewed these claims and found

²*Report and Order*, at ¶ 106.

³47 C.F.R. § 76.1000(g). Netlink uplinks and distributes the "Denver 5" service consisting of KUSA-TV (ABC), KCNC-TV (NBC), KMGH-TV (CBS), KRMA-TV (PBS), and KWGN (IND). Netlink also uplinks and distributes the Fox affiliate in Denver, KDVR-TV, and the "Atlantic 3" service, consisting of WPLG-TV (ABC), WUSA-TV (CBS), and WHDH-TV (NBC).

⁴*See, e.g.*, Comments of the National Rural Telecommunications Cooperative ("NRTC") at 6-7, 8; Comments of Satellite Receivers, Ltd. ("SRL") at 2, 3. These two HSD distributors (out of more than 30 regional and national HSD program packagers) routinely request the "cable rate" although service delivered to cable operators is functionally

instead that the Commission's program access rules, and its decisions, have given competing distributors access to programming, and the Commission expressly found it unnecessary to make any specific recommendations that Congress amend the program access provisions.⁵

What complaining distributors continuously fail to acknowledge is that the satellite broadcast programming market is perhaps the most competitive of all programming markets. Superstation and network station carriers such as Netlink already face unique competitive pressures and artificial ceilings on the prices they can charge distributors.⁶ Indeed, the explosive growth in the programming market generally, and in HSD subscribership specifically, undercuts any notion that superstation or network station programmers are discriminating. Notwithstanding the unique competitive pressures and the extensive development of the HSD market, as confirmed by the comments and attachments submitted by the Satellite Broadcast Communications Association ("SBCA"),⁷ NRTC and

different. Moreover, these HSD distributors have no facilities for receiving and redistributing *any* programming service, and thus could not even utilize the service provided to cable operators. Finally, there are substantial costs incurred in complying with the "white area" screening requirements under the copyright law when serving the HSD market with network stations. 47 U.S.C. § 119(a)(8), (9).

⁵*First Competition Report*, 9 FCC Rcd. 7442, 7536, ¶ 192 (1994).

⁶*Report and Order*, at ¶ 100.

⁷ The SBCA found that not only has there been a significant increase in subscribership among all technologies providing satellite delivered programming directly to the home, but there is still significant potential for offering additional services, and that barriers to competition do not arise from pricing differentials or other conduct of the programmers, but more from "abusive zoning ordinances." SBCA Comments at 18-20, 22.

SRL still seek more favorable treatment under the rules.

NRTC and SRL also ignore the impact on network station programmers such as Netlink, who must comply with revised restrictions on "white area" delivery of network signals. These provisions of the amended Satellite Home Viewer Act have become highly contentious. Many homes have been disconnected, while networks still challenge tens of thousands of households, well beyond the limitations established in the 1994 Act, placing financial burdens on the carriers with the threat that if the carriers, who are required to rely on statements from subscribers, ultimately lose a challenge, they must pay the cost of field testing.⁸ Although Netlink has done its best to avoid any violations of the Copyright Act, the costs to the carriers of complying with the screening requirements for distributing network stations to HSDs has grown so considerably, that the allegations of price discrimination ring particularly hollow.

Competition is rife in the HSD market. New technologies will provide even greater competition in the years to come. There are more than 20 network stations and superstations available by satellite to all MVPDs in the HSD market, and more than 100 satellite programming services that are available to home dish owners from more than 35 programmers, regional and national packagers, and distributors of programming. Becoming an HSD distributor requires minimal investment, and anyone willing to invest in the necessary facilities to receive, up-link and distribute superstation and network station

⁸*See generally*, SBCA Comments at 16-17.

signals can become a satellite broadcast programming vendor and compete with Netlink as well as the other programmers.

In fact, the HSD market is one of the most competitive and robust in the country. Price competition is fierce as the programming vendors vie for subscribers by marketing their products and services through as many distributors as possible. Most of the distributors distinguish themselves on the basis of customer service and creative packaging. While a few distributors will always want lower programming prices, it is clear that the prices that home dish owners pay for programming already are substantially lower than those paid by similarly situated cable subscribers.⁹ The Commission has recognized the need for, and condoned the use of, price differentials in a market that clearly operates with fierce competition. Competition eliminates any motive to engage in price discrimination because unjustified price differentials simply will not survive in a truly competitive market..

The Commission's latest report to Congress should again note the growth and competitiveness of the HSD market. Moreover, the success of the high-powered direct broadcast satellite ("DBS") services (DirecTV and USSB), in addition to the medium-powered DBS service (Primestar), have made the HSD market all the more competitive and

⁹Netlink provides its "One Stop" package consisting of 37 channels of popular satellite cable and satellite broadcast (network and superstation) programming for \$18.00 per month. The benchmark monthly cable rate for 24 regulated satellite channels on an MSO's 10,000 subscriber cable system, in an average income area, is 30% higher or \$23.48 per month, for 13 fewer channels. FCC Form 1200, Module C.

provide significant competition to cable. The Commission's report should reflect these developments and note that the program access rules need no amendment.

Respectfully submitted,

NETLINK USA

By: 

John D. Seiver

COLE, RAYWID & BRAVERMAN

1919 Pennsylvania Avenue, N.W.

Suite 200

Washington, D.C. 20006

Their Attorneys

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